U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30627619

Date: APR. 10, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, an accounting professional, seeks classification as an individual of exceptional ability in the sciences, arts or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national

interest waiver petitions. *Dhanasar* states that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. UNDERLYING EB-2 CLASSIFICATION

The Petitioner claims to qualify for EB-2 classification as an individual of exceptional ability. A petitioner seeking classification as an individual of exceptional ability must present documentation that satisfies at least three of the six categories of initial evidence listed at 8 C.F.R. § 204.5(k)(3)(ii). However, meeting the minimum requirement by providing at least three types of initial evidence does not, in itself, establish that the Petitioner meets the requirements for exceptional ability classification. In the second part of the analysis, officers should evaluate the evidence together when considering the petition in its entirety for the final merits determination. The officer must determine whether or not the Petitioner, by a preponderance of the evidence, has demonstrated that they have a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. *See generally* 6 *USCIS Policy Manual* F.5(B), https://www.uscis.gov/policy-manual.

The Director concluded that the Petitioner met five of the six criteria related to establishing exceptional ability.[2] The Director, however, did not conduct a final merits determination and therefore did not make a finding as to whether the Petitioner established that he is an individual of exceptional ability and thus eligible for EB-2 classification as a threshold issue for this category. We also note that the Director did not discuss the evidence in the record and how the evidence establishes that the Petitioner meets each of the criteria. Instead, the Director only stated the conclusion that these criteria were met.

As noted above, meeting the minimum requirements by providing at least three types of initial evidence is not sufficient to establish that the Petitioner is an individual of exceptional ability, but instead is only the first step. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.5(B)(2). The second step of the process is based on a comprehensive qualitative analysis of the evidence. On remand, the Director should first analyze whether the evidence in the record establishes at least three of the regulatory criteria related to exceptional ability and, if necessary, fully explain how the evidence in the record does or does not establish each criterion. If the evidence does establish at least three of the criteria, the Director should then conduct a final merits determination to decide whether the evidence in its totality shows that the Petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field and would, as a result, meet the exceptional ability standard as a threshold issue prior to considering eligibility for a national interest waiver.

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[1] *See also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[2] The Director's decision did not render a determination as to whether the Petitioner qualifies as an individual of exceptional ability, but rather concluded in the request for evidence (RFE) that because the Petitioner satisfied five of the six criteria, he "provided sufficient proof to establish that he qualifies for the [EB-2] classification."

III. NATIONAL INTEREST WAIVER

As to the Petitioner's eligibility for a national interest waiver, the Director determined that the Petitioner did not satisfy any of the three prongs of the *Dhanasar* analytical framework. On appeal, the Petitioner contends that the Director ignored substantial evidence submitted in support of his petition and as a result did not reach a proper conclusion in denying his national interest waiver request.

An officer must fully explain the reasons for denying a visa petition to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Upon review, we agree with the Petitioner's assertion that the Director's decision does not properly analyze the evidence submitted or explain the reasons for denial.

Regarding the substantial merit and national importance of the proposed endeavor, the Director concluded that the endeavor had neither but did not provide an analysis or explain the reasoning behind this conclusion aside from stating that the Petitioner's statement was insufficient. We note, however, that in addition to his personal statement, the Petitioner submitted a copy of his professional plan, an expert opinion letter, letters of recommendation, and other documentary evidence in support of his eligibility under the first prong. The Director should analyze the evidence to determine whether the record sufficiently demonstrates the endeavor has substantial merit and national importance. The endeavor's merit may be demonstrated in a range of areas, such as business, entrepreneurialism, science, technology, culture, health, or education. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.5(D)(1). In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *See Dhanasar*, 26 I&N Dec. at 889. The Director should focus on what the Petitioner will be doing rather than the specific occupation. An endeavor having significant potential on the broader implications for a field or region generally may rise to the level of having national importance for the purpose of establishing eligibility for a national interest waiver. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.5(D)(1). The Director should review the record to determine whether the Petitioner has demonstrated his proposed endeavor has significant potential on the broader impact in the field.

If the Director concludes that the Petitioner's documentation does not meet the substantial merit or national importance requirements of *Dhanasar's* first prong, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

For *Dhanasar's* second prong, the Director concluded that the Petitioner was not well positioned to advance the proposed endeavor, but did not sufficiently explain the basis for the determination. On appeal, the Petitioner argues that the Director ignored evidence of his academic qualification, professional achievements, and years of experience in the field, and reiterates his qualifications and commitment to advance his proposed endeavor. Although the Director listed the types of documents submitted by the Petitioner and generally concluded that they were insufficient, the decision does not analyze this evidence or explain why such evidence was deficient.

Again, an officer must fully explain the reasons for denying a petition in order to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(l)(i); *see also Matter of M-P-,* 20 I&N Dec. 786. Here, the Director's decision did not adequately address the evidence submitted with the petition or in response to the RFE.

The Director should analyze the evidence to determine if the Petitioner is well positioned to advance the proposed endeavor, and should consider all of the evidence offered for prong two, including the Petitioner's academic record, certifications and trainings, expert opinion letter, and letters of support and recommendation. The Director should analyze the specific content of the record to determine if this documentation renders the Petitioner well positioned to advance the proposed endeavor. If the Director concludes that the Petitioner's documentation does not meet *Dhanasar's* second prong, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

As to the third prong of *Dhanasar,* the Director again concluded that the Petitioner's statement was insufficient because it was not accompanied by any evidence. The Director concluded that "the evidence submitted does not support the Petitioner's statements that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification." Although the Director stated the law and the relevant considerations in performing the third prong's balancing analysis, the Director did not discuss the evidence weighed in balancing those considerations. Without a proper evaluation of the factors identified in *Dhanasar's* third prong, the Director's determination for this prong was in error. If the Director concludes that the Petitioner's documentation does not meet this prong, the decision should address the Petitioner's arguments and evidence, and explain the relative decisional weight given to each balancing factor.

IV. CONCLUSION

Accordingly, we are remanding the petition for the Director to consider whether the Petitioner has satisfied the eligibility requirements for the underlying EB-2 classification. In addition, the Director should properly apply all three prongs of the *Dhanasar* analytical framework to determine if the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director may request any additional evidence considered pertinent to the new determination. As such, we express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.